

Appellant-defendant Jharon Holland appeals the trial court's order revoking his probation, arguing that the evidence supporting the revocation was impermissibly obtained in violation of the Fourth Amendment to the United States Constitution and Article 1, section 11 of the Indiana Constitution and that, in the absence of that evidence, there is insufficient evidence supporting the revocation. Finding no error, we affirm.

FACTS

On October 5, 2007, Holland was serving 465 days of probation following his guilty plea to class D felony dealing in a sawed-off shotgun. As a condition of probation, Holland agreed to refrain from committing any new criminal offenses and from possessing a firearm. Simultaneously to his probation, Holland was on home detention stemming from another, unrelated criminal matter.

At approximately 1:00 a.m. on October 5, 2007, Officer Michael Hart of the Speedway Police Department observed Holland making an incomplete stop in a vehicle with a malfunctioning taillight. Officer Hart initiated a traffic stop and asked Holland for his driver's license and registration. Without prompting, Holland explained that he was on home detention but had permission to be away from home at that hour to run an errand. Holland stated that he was required to return to his residence quickly and told Officer Hart that he "could call home detention to verify this" Tr. p. 28. Officer Hart noted that Holland appeared to be nervous and was sweating profusely.

Officer Hart checked Holland's identification and initiated the process of verifying Holland's home detention status. Officer Hart quickly verified Holland's identification and vehicle registration, but waited to release Holland until he was contacted by home

detention administrators approximately fifteen minutes later. At that time, Officer Hart learned that Holland did not have permission to be away from his residence at that hour. Consequently, Officer Hart took Holland into custody for the offense of escape. Officer Hart then performed an inventory search of Holland's vehicle incident to his arrest and discovered a loaded handgun and crack cocaine in the glove box. The State subsequently charged Holland with class B and class C felony possession of cocaine, class D felony escape, and class C felony carrying a handgun without a license.

The State filed a notice of probation violation on October 17, 2007, alleging that Holland had violated his probation by committing the above offenses. At Holland's February 7, 2008, probation revocation hearing, Officer Hart testified regarding the details of the traffic stop and the incriminating evidence that he found during the subsequent inventory search. He also testified that the location of the stop was within 1000 feet of a family housing complex. Holland did not object to the admission of this evidence. At the close of the hearing, the trial court revoked Holland's probation and ordered him to serve the balance of his sentence. Holland now appeals.

DISCUSSION AND DECISION

Holland first argues that the trial court erroneously admitted evidence of the handgun and crack cocaine that Officer Hart discovered in his vehicle because the evidence was allegedly obtained in violation of the Fourth Amendment to the United States Constitution and Article 1, section 11 of the Indiana Constitution. Initially, we observe that Holland failed to object to the admission of this evidence at the hearing. Therefore, he has waived this argument. Poulton v. State, 666 N.E.2d 390, 393 (Ind.

1996). Waiver notwithstanding, we observe briefly that we will reverse a trial court's ruling on the admission of evidence only when it constitutes an abuse of discretion. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

Essentially, Holland argues that Officer Hart was required to release him upon verifying his license and registration. By waiting for fifteen minutes until he heard from home detention administrators in the absence of a reasonable suspicion of criminal activity, Officer Hart allegedly violated Holland's rights under the United States and Indiana Constitutions. The right to be free from illegal searches and seizures as guaranteed by the federal and state constitutions, however, is a personal right that may be waived by valid consent to police conduct. Moran v. State, 644 N.E.2d 536, 540 (Ind. 1994), abrogated on other grounds by Litchfield v. State, 824 N.E.2d 356 (Ind. 2005); Meyers v. State, 790 N.E.2d 169, 172 (Ind. Ct. App. 2003).

Here, as noted above, Holland volunteered the fact that he was on home detention to Officer Hart. He also explained that he had permission to be out and that he had to return quickly, telling Officer Hart that he "could call home detention to verify this" Tr. p. 28. Holland, therefore, consented to Officer Hart's investigation of his home detention status. Under these circumstances, therefore, his constitutional rights were not violated and the trial court did not abuse its discretion by admitting this evidence.

Holland also argues that there is insufficient evidence supporting the revocation. A probation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Ind. Code § 35-38-2-3(e); Cox v. State, 706 N.E.2d

547, 551 (Ind. 1999). As conditions of his probation, Holland agreed to refrain from committing any new criminal offenses and from possessing a firearm.

The record reveals that Holland possessed crack cocaine and a loaded handgun at the time Officer Hart initiated the traffic stop. See Holmes v. State, 785 N.E.2d 658, 660 (Ind. Ct. App. 2003) (holding that constructive possession of contraband may be established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband, which can be inferred from proximity of the contraband to the defendant). Furthermore, Holland was not authorized to be away from home under the terms of his home detention.

Under these circumstances, we find that the State proved by a preponderance of the evidence that Holland had committed the new offenses of escape and class B and class C felony possession of cocaine. See Ind. Code 35-44-3-5(b) (escape is committed by knowingly or intentionally violating a home detention order); Ind. Code § 35-48-4-6(b)(2)(B)(iii) (class B felony possession of cocaine if within 1000 feet of a family housing project); I.C. § 35-48-4-6(b)(1)(B) (class C felony possession of cocaine if drugs are possessed in conjunction with a firearm). Therefore, there is substantial evidence supporting the trial court's conclusion that Holland had violated one or more terms of probation, and the trial court properly revoked Holland's probation and ordered him to serve the balance of his sentence.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.